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October 20, 2003

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Sprint-United Tariff 2003-710 to Introduce Safe and Sound II Solution*  
Docket No. 03-00442

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's Brief Regarding Resale Questions. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

power of Tennessee customers to encourage telecommunications companies to listen to their needs and respond with solutions that work for customers. These bundled offers are not unique to ILECs, such as Sprint and BellSouth, but are also used by CLECs, such as MCI's *Neighborhood* plan. The industry's emphasis on bundles is a clear sign that these carriers believe bundles are an attractive and useful offering for customers. For these reasons, Tennessee's policy should be one of encouragement for companies offering these discounted bundles. Consistent with this policy, the Authority should avoid an overbroad interpretation of resale requirements, which could create a disincentive to the offering of these attractive discounts to customers.

#### **Discussion of Issues and Authority**

I. **Neither State nor Federal Statutes, Rules, Orders or Other Provisions Require that a Bundled Offering Including Telecommunications Services and Non-Telecommunications Services Be Made Available for Resale.**

The statute addressing the resale obligations of ILECs like Sprint and BellSouth, is Section 251(c)(4) of the Telecommunications Act of 1996 ("the 1996 Act"). All of the TRA's rulings on ILEC resale derive from this sole source of authority. There is no separate state authority governing resale. Accordingly, the question of whether resale is required turns solely on the application (or lack of application) of Section 251(c)(4).

Bundles of regulated and non-regulated services are not subject to the resale requirements contained in Section 251(c)(4). Section 251(c)(4) of the 1996 Act limits an ILEC's resale obligations to "telecommunications services" that the ILEC provides to retail subscribers. When a bundle includes telecommunications services provided by the ILEC combined with other services which are not telecommunications services, or combined with services (whether or not a telecommunications service) that are provided

by another non-ILEC provider (such as a wireless provider), clearly the bundle as a whole cannot be deemed a “telecommunications service” provided by the ILEC subject to the resale requirements contained in Section 251(c)(4). Simply put, a non-telecommunications service such as CPE or a wireless carrier’s offering is not magically transformed into a “telecommunications service” provided by an ILEC at retail merely by virtue of it being included in a bundle.

Moreover, requiring resale of the telecommunications services included within the bundle at the discounted bundle price, when that particular service – at that particular price – is not available on a standalone basis to a retail customer, would also run afoul of the requirements of Section 251(c)(4). This is because, in that instance, the ILEC’s retail customers can only obtain the discounted bundle price by also agreeing to purchase the other items in the bundle. As a result, there is no price available to a retail customer of the ILEC for the individual telecommunications service components of the bundle other than the ordinary tariffed price for those services.<sup>2</sup> Imposing a stand-alone resale obligation – at a price not actually available in the market on a stand-alone basis – would dramatically broaden the resale requirement beyond what the statute requires. Section 251(c)(4) simply does not require the application of a wholesale discount to a retail price that is not actually available to the ILEC’s end-users in the real marketplace. The statute refers to service “that the carrier provides at

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<sup>2</sup> CLECs have argued in the past that resale should be required for cash-back offers at what some have referred to as the “effective price” of the telecommunications service, meaning the price of the service less the cash-back discount. While BellSouth disagrees with this position, it is important to note that this argument is quite different from the current case in which the CAD appears to suggest that BellSouth should tear apart a bundle and apply some prorated portion of the bundled price along with a wholesale discount in order to more deeply discount the services for resale. In the case of a cash-back offer, the price of the service and the benefit of the cash all are associated with one single service. BellSouth is not required, then, to engage in a fiction that it offers the service at that price when, in fact, the service is really only available at that price when bought in connection with other services. In the case of a bundle, there is no such “effective price”.

retail to subscribers.” When the discount is not offered on a stand-alone basis to retail customers, the statute does not call for resale rates to be calculated on the false assumption that such discounts are made available on a stand-alone basis in the market.

**II. If so, should the wholesale discount apply?**

The wholesale discount applies to the individual telecommunications services included within a bundle as applied to the ordinary tariffed rate for these services. BellSouth makes all of the telecommunications services it provides available at the tariff rate minus the TRA-set 16% wholesale discount. For those promotions of telecommunications services that extend beyond 90 days, BellSouth makes those services available for resale at the promotional price minus the 16% wholesale discount. This approach is completely consistent with Section 251(c)(4), and nothing more is required to comply with this statute.

**III. If yes, how should the wholesale discount be applied?**

In the case of a bundle of regulated and nonregulated services where the discounts are not offered on a stand-alone basis, the wholesale discount should be applied as a reduction from the ordinary tariffed price of the regulated service, without regard to the pricing of the bundled offering.

**CONCLUSION**

Recently, resale of promotions has become the favorite area for complaints by the Consumer Advocate. Apparently under the impression that resale of promotional discounts is vital to CLEC competition, the CAD has started to raise resale concerns about each new ILEC promotion.

As an example, the CAD vigorously argued resale concerns in the “Welcoming Reward” case – going so far as to appeal the Authority’s decision to handle the matter through legal briefs and argument rather than convening a contested case. One would think, given the CAD’s emphasis on this issue and its pursuit of the Welcoming Reward matter, that CLECs are heavily involved in competition using resale of ILEC promotions in Tennessee. The Welcoming Reward promotion has now expired. ***During its duration, BellSouth received exactly zero (“0.00”) requests for resale of the promotion. Zero requests. No resale requests – at all.***

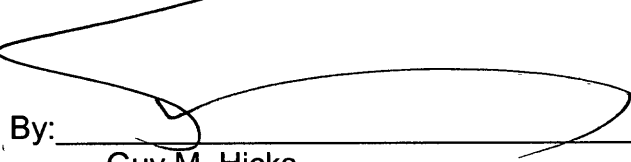
Given the lack – the ***complete*** lack – of any actual interest in resale of the promotion, it seems clear that these resale-based attacks on promotions are not truly helpful to the support of competition in Tennessee. The facts reveal that CLECs in Tennessee are not interested in resale of BellSouth promotions. Notwithstanding the lack of real interest in resale of promotions, resale arguments have become an effective device to slow or even stop BellSouth from offering customers discounted promotions.

Given the strains that current economic times place on state treasuries across the nation, including Tennessee, customers clearly are not served when the Authority is

called upon to spend its finite resources hearing cases about resale when the facts reveal that, after that case is concluded, no one seeks to engage in resale.<sup>3</sup>

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A large, stylized handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

By:

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<sup>3</sup> Given the pursuit of this issue on behalf of those with no interest in the issue, in the future, it might be helpful for the Authority to require those intervening in order to raise resale issues to demonstrate standing by naming a party that actually plans to engage in resale of the promotion at issue.

## CERTIFICATE OF SERVICE

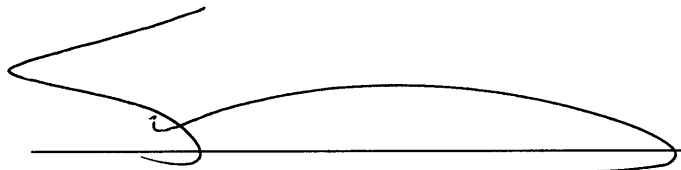
I hereby certify that on October 20, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

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